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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	**VP1300CR201001325**
Plaintiff,	
vs.	**RESPONSE TO STATE'S MOTION IN LIMINE PRECLUDING CHARACTER EVIDENCE AND EVIDENCE OF THE DEATH OF JAMES KNAPP**
STEVEN DEMOCKER,	
Defendant.	**(Oral Argument Requested)** **(Hon. Warren Darrow)**

Defendant Steven DeMocker, by and through Counsel undersigned, hereby Responds to the state's "Motion in Limine Precluding Character Evidence and Evidence of the Death of James Knapp," (hereinafter "2011 Knapp Motion in Limine"). This "new" 2011 Knapp Motion in Limine is essentially a re-tread of the state's April 14, 2010 "Motion in Limine to Preclude Character Evidence of James R. Knapp." It is still not a valid motion.

This Response is made pursuant to the Defendant's Right to Due Process of Law and the Right to a fair trial per the 5th and 6th Amendments of the U.S. Constitution, § 2, Articles 3, 4 and 24 of the Arizona Constitution, and the Arizona Rules of Criminal Procedure. The Defendant also re-asserts his noticed Defense of Third-Party Culpability.

It is possible that the state's Motion in Limine concerning Mr. Knapp is a "fishing

expedition," to find out how the "new defense team" views Mr. Knapp. The basis for the presentation of the complete "Knapp evidence" in this case is powerful, and has been known by the state since the beginning of the case. However, as the interviews concerning Mr. Knapp get under way on August 11, 2011, the Defense is not obligated to divulge every strategy concerning Knapp. The previous Defense team said the following on the subject:

> In essence, this latest attempt to keep Mr. Knapp out of this case is a motion aimed at whether enough evidence exists to allow Mr. DeMocker to point to Mr. Knapp as a possible killer. Based upon a defense interview of the State's own cell tower expert just conducted on April 23, 2010, and the depositions of Mr. Knapp's former wife and his young son taken on April 21, a scenario has developed in which Mr. Knapp would have had an opportunity to kill Carol Kennedy and cover his tracks with the alibi evidence previously submitted. In short, a circumstantial case can be demonstrated, no weaker than that offered against Mr. DeMocker, that Knapp was the real killer who concocted an elaborate alibi to attempt to hide his guilt. That case is based upon a time-line that would allow Mr. Knapp to leave his son alone just long enough to go to Bridle path, kill Carol, check his voice mail on the way back, and return to his former wife's home just before she arrived.

(Response to State's Motion in Limine to Preclude Knapp Evidence, April 26, 2010, in P1300CR20081339, pg. 2).

In its 2011 Knapp Motion in Limine, the state said:

> "Mr. Knapp provided law enforcement with a valid alibi at the time of the murder, and was ruled out as a suspect in the murder."

(2011 Knapp Motion in Limine, pg. 1.).

Knapp lived a 200 or so feet from Ms. Kennedy, in her guesthouse. Knapp was conveniently *the first person on the scene* on the night of the murder, showing up shortly after the arrival of law enforcement. Knapp immediately pointed the finger at the Defendant. It was at those first moments in this case -- and no later -- that Knapp was "ruled out" as a suspect in the murder. No alibi was really needed for Knapp, because no serious investigation was ever done on Knapp. No serious interrogation was ever done on Knapp. Knapp was the "tour guide" for law enforcement through Ms. Kennedy's house. Knapp had keys to the house. No law

enforcement testing of Knapp's clothes, truck, washing machine, shoes, bike, or person was ever done. Knapp had a serious enough drug problem that he was not allowed to drive his children around not have them spend the night with him, yet no serious questioning by the state about Knapp's drug use ever happened.

Why? Because no one but the Defendant was ever considered a suspect.

Then under really suspicious circumstances, Mr. Knapp was killed just six months after Ms. Kennedy. The *same medical examiner in this case* -- Dr. Keen -- arrived on the scene of Knapp's death 14 or so hours after the investigation into Knapp's death, and declared that it was a suicide. Only in this case would such a rush to judgment pass muster with law enforcement investigators.

In State v. Gibson, 202 Ariz. 321(2002), the Arizona Supreme Court held:

> "We hold that Rules 401, 402, and 403, Arizona Rules of Evidence, set forth the proper test for determining the admissibility of third-party culpability evidence."

(*Id.*, at 324).

The Gibson Court found a low burden to present third party culpability:

> The proper focus in determining relevancy is the effect the evidence has upon the defendant's culpability. To be relevant, the evidence need only tend to create a reasonable doubt as to the defendant's guilt.

In the instant case, what the state means by "ruled out as a suspect in the murder" (*supra*) is that the state did not examine the veracity of Knapp's alibi. Had the state given the intense scrutiny to Knapp's alibi that it gave to the Defendant's alibi, the case would have been materially different.

Rule 401, Arizona Rules of Evidence, "Definition of 'Relevant Evidence'" states:

> "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

"This standard of relevance is not particularly high." State v. Oliver, 158 Ariz. 22, 28, 760 P.2d 1071, 1077 (Ariz.,1988).

> In our view, the more convincing opinions have recognized that although the language of Rule 404(b) appears to apply universally, its central purpose is to protect criminal defendants from unfair use of propensity evidence. United States v. Lucas, 357 F.3d 599, 611–15 (6th Cir.2004) (Rosen, J., concurring); United States v. Aboumoussallem, 726 F.2d 906, 911–12 (2d Cir.1984). Rule 404(b) has its source in the common law, and the common law rule restricting the *635 use of other-acts evidence was designed to prevent the defendant from being convicted simply because the jury might conclude from the other act that he was a "bad man." Lucas, 357 F.3d at 611 (Rosen, J., concurring).

St. v. Machado, 246 P.3d 632, 634 -635 (Ariz.,2011)

> We therefore make explicit today what the court of appeals found implicit in Gibson and Prion. The admission of third-party culpability evidence is governed by the standards of Rules 401 through 403 of the Arizona Rules of Evidence, not by Rule 404(b) ... We therefore affirm the opinion below insofar as it concludes that *exclusion of this evidence was reversible error.*

(*Id.*, at 635, italics added).

It must be noted that third party culpability in this case is vital to the Defense. The state's case against the Defendant is weak and circumstantial. The state cannot place the Defendant at the scene of the crime: No DNA, no blood, no fingerprints or other biological evidence, and no confession. Importantly, these facts will never change – no new evidence will surface that could place the Defendant at the scene of the crime – because he was not there and did not murder Carol Kennedy.

Knapp, however, can be placed at the scene of the crime -- by his fingerprint, which was on a document dated the same day as Ms. Kennedy's murder. That document was sitting on the kitchen counter near where Ms. Kennedy was preparing a salad on the night of her murder.

Because the state's case against the Defendant is weak and circumstantial, the Defendant should be given wide latitude to present third party culpability.

> As far as LeClair was concerned, the evidence did not concern a collateral side issue, but was one of the key points of his defense. Especially where the state's case is based on circumstantial evidence, the court should allow the defendant "wide latitude" to present all the evidence relevant to his defense, unhampered by piecemeal rulings on admissibility.

(State v. LeClair, 425 A.2d 182, 186 (Me. 1981)).

That Knapp is a viable candidate for third party culpability cannot be seriously in debate, which is why the state does not want the jury to hear that evidence. The Gibson burden has been met.

Further, Knapp is part of the "voice in the vent story" (and the subsequent email Count in this Indictment), in which there is an allegation that Knapp put into motion the events surrounding the murder, because of his involvement in a criminal prescription drug enterprise in Phoenix. To defend against that Count requires the *ample* evidence of Knapp's mental state, his addiction to prescription drugs, and his desperate search for money, his scams and failed relationships in the months leading up to Carol's death. The state has thoroughly investigated this voice-in-the-vent matter and cannot identify the source of the information, nor provide evidence that the voice in the vent did not happen. Put another way, the state cannot disprove that the voice-in-the-vent was not real, and Knapp remains a a part of it.

CONCLUSION

The previous Defense team said:

> "Despite the State's repeated efforts to keep it out, Mr. Knapp and his role in this case should be presented to this jury. As the state often notes about Mr. DeMocker, Mr. Knapp is another person who had motive, opportunity and the means to kill Carol Kennedy. His behavior before and after the murder and his mysterious death six months later are all part of that story. His so-called "iron-clad' alibi has holes in it even according to the state's own witnesses ... ."

(Response to State's Motion in Limine to Preclude Knapp Evidence, April 26, 2010, in P1300CR20081339, pg. 3-4).

For the above stated reasons, the Knapp evidence must be allowed. The state's 2011 Knapp Motion should be denied.

RESPECTFULLY SUBMITTED this August 8, 2011.

Craig Williams
Attorney at Law

A copy of the foregoing delivered to:
Hon. Warren Darrow, Division PTB,
Jeff Paupore, Steve Young, Yavapai County Attorney's Office
The Defendant
Greg Parzych, via e-mailed .pdf
by: _____